

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3148 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JYOTSNABEN D. PANDYA

Versus

MANAGING TRUSTEE

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Appearance:

MR RA MISHRA for Petitioner

SERVED for Respondent No. 1 and 2

MR RM DESAI for Respondent No. 3

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CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 25/11/96

ORAL JUDGEMENT

1. This petition is filed by the petitioner against the order passed by the Gujarat Secondary Education Tribunal, Ahmedabad, on April 6, 1984 in Application No. 96 of 1983.

2. The case of the petitioner is that she was

appointed as a Part Time Craft Teacher in respondent no.1 school, namely, Nutan Kelavani Mandal with effect from July 1, 1967. Necessary certificates were also produced at the time of her appointment. It is her case that she was appointed as a Part-time teacher. When post of full-time teacher fell vacant she made an application and prayed the Institution to make her permanent. Without there being any reason, only with a view to deprive the petitioner all benefits which otherwise are available to her, said prayer was not granted. The petitioner, therefore, was constrained to approach the Tribunal by filing the above application.

3. In the said application, a prayer was made to the effect that the respondent school may be directed to treat the petitioner as full-time Craft Teacher from the date of her appointment and to grant all consequential benefits including the difference of salary. In the alternative, it was prayed that the petitioner may be treated as full-time craft teacher and to grant all the benefits even if such post is not available.

4. The Tribunal after hearing the parties, partly allowed the application filed by the petitioner and following order was passed:

"The application is partly allowed. The prayer made by the applicant for appointment as a Full Time Teacher is rejected. However, it is hereby declared that the applicant is entitled to the pay scale of Rs.155-260 which is revised to Rs.290-560 as per Desai Pay Commission Recommendations admissible to a non-matric sewing teacher with effect from 1.1.74 as mentioned above. It is further declared that the applicant being in the pay scale of Rs.290-560 would be entitled as a part time teacher to receive Rs.3.15 p. per period from 1.1.74 to 31.3.76 and Rs.3.75 p. per period from 1.4.76 onwards. As the applicant is taking 8 periods per week, she will be entitled to receive Rs.100-60 P. from 1.1.74 to 31.3.76 at the rate of Rs.3.15 p. per period and Rs.120/- p.m. at the rate of Rs.3.75 p. per period from 1.4.76 onwards. The Management is directed to pay her the difference of salary from 1.1.74 till to date within 15 days from the receipt of this order calculating on the basis of her salary at Rs.100-60 p. per month from 1.1.74 to 31.3.76 and at the rate of Rs.120/- p.m. from 1.4.76 onwards which shall be admissible for the purpose of the grant. It is

further declared that as the applicant was appointed prior to coming in force of the Gujarat Secondary Education Act and Regulations made thereunder, she would be entitled to be continued as a teacher of sewing in the school eventhough she does not possess SSC qualification. The Head Mistress is further directed to send her application form for SSC Examination which the applicant may give to her for forwarding the same to the Gujarat Secondary Education Board with due certificates thereon without any delay."

5. Being aggrieved by the order rejecting part of the prayer, the petitioner has approached this court.

6. Rule was issued on January 30, 1986 and to day the matter is called out for hearing. Though served nobody appears on behalf of respondent nos.1 and 2 the school management. Appearance of Mr.R.M.Desai is shown but nobody is present on behalf of respondent no.3.

7. I have heard Mr.R.A.Mishra, learned counsel for the petitioner. The counsel contended that in the light of the circulars issued by the Government from time to time, it was incumbent upon the respondents School management to consider the case of the petitioner for giving her benefits as full-time teacher and to grant all consequential benefits. In this connection, my attention was invited by Mr.Mishra to a letter issued by the Gujarat Secondary Education Board, Gandhinagar on February 11, 1980. In the said letter-cum-policy decision earlier circular dt. August 6, 1977 was mentioned and it was stated that in the said circular some clarification was to be made. By clarification, it was stated that as and when vacancy of full-time teacher arises in any private secondary school, the management on giving some excuse or reason that such vacancy does not pertain to the subject in which the part time teacher is serving, no appointment could be made. It was stated that by giving such excuses, right of the part time teacher should not be affected to become full-time teacher. Mr.Mishra, contended that as a matter of fact in number of such matters, the Tribunal has decided in favour of the part-time teachers by directing the school management to give full-time appointment to the part-time teachers. Mr.Mishra also drew my attention to the observations made by the Division Bench of this court in Spl.C.A.No.2122 of 1980 decided on July 6, 1981 wherein the Division Bench of this court held that the circulars

issued by the Government are binding on the management and it is not that the management has any absolute or uncannalised discretion in giving appointment or making part-time teachers as full-time teachers. Since the management is served and nobody appears, I could not get assistance from the other side. Nobody is present on behalf of the respondent no.3 also.

8. In my opinion, therefore, only course which is open to me so that ends of justice would be met is to quash and set aside the order passed by the Tribunal so far as it is adverse to the petitioner and by remanding the matter to the Tribunal directing it to consider the matter in the light of various circulars issued by the Government from time to time. Since the Tribunal has not applied its mind to various circulars issued from time to time and explanatory letter dt. February 11, 1980 Annexure.C to the petition, which is already referred hereinabove, the Tribunal will apply its mind and pass order in accordance with law. I may not be understood to have expressed any opinion one way or the other with regard to the said circular and the Tribunal will decide the same after hearing the parties. Since the matter is of 1985, the Tribunal is directed to dispose of the same by giving due priority. Rule is made absolute to the above extent with no order as to costs.

During the course of the judgment, Mr. R.M.Desai, advocate for respondent No.3 appeared and he did not object to the matter being remanded to the Tribunal for hearing.

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